A SHORT METHOD WITH THE RAILWAYS—A NEW "PILGRIMAGE OF GRACE"

BY APPLETON MORGAN

WHATEVER else Henry the Eighth of England was, or was not, he proposed to be a constitutional monarch. Although a Tudor, whose will was Law, he at least never fell into the error that cost Charles the First his head—the error of helping himself to anything which he might, by a little patience, have manipulated his Parliament into begging him to accept!

When he cast greedy eyes upon the enormous hoards of the Monasteries, he proceeded with the most admirable circumspection. He caused it to be represented to Parliament that His Majesty had learned with sorrow that there were divers rumors of irregularities and even of immoralities in these Religious establishments, humbly begging that Parliament would be pleased to appoint a Commission to inquire into the truth of these most regrettable rumors.

Furthermore, the royal message suggested that, should any such irregularities or immoralities be discovered, it might be the duty of Parliament to seize upon the holdings of this, that, or the other Religious House, and that the burden of the public taxes of which England so justly complained, etc., would be mitigated to just the extent of that particular escheat!

The Parliament was not lax in taking its cue. What the Commissions sought, that they found. They reported all the irregularities and immoralities the most exacting King could desire. The Decrees of Parliament followed. Half the religious establishments in England were legally raped, ravished, and wiped out of existence.

His Majesty gracefully accepted the loot of the one half.

But there remained yet another half, against which no irregularities or immoralities had been reported.

Accordingly, there were organized what were called "Pilgrimages of Grace." These were public uprisings to protest against this wholesale spoliation of what the common people had so long held sacred. In many parts of the interior, mobs of men and women were formed, or induced to form themselves, into processions. The Riot Act was read to these processions. They did not disperse; they even burned a few hay-ricks and were guilty of other equally blood-curdling atrocities! But, even then, Henry was still the constitutional monarch. Instead of hanging, drawing, and quartering these malcontents at once (he attended to that later) he sent still other Commissioners. These Commissioners labored with the heads of these *émeutes*—convinced them that His Majesty's only solicitude was for his poor subjects groaning under the burdens of intolerable taxation, and that all he sought was the happiness of his people!

Thus procuring the disbandment of these "Pilgrimages of Grace," the rest was easy. The leaders were hung, drawn, and quartered in due and ancient form. And—to remove a possible temptation for more Pilgrimages of Grace against the peace and order of the Realm—the King proclaimed the confiscation of the remaining Religious establishments, and distributed their possessions to his favorites. That any burden of taxation anywhere was ever lightened, history omits to record. But the wealth of the Monasteries had peacefully disappeared into the Royal coffers!

Doubtless the Railways of the United States would just at present welcome a Henry the Eighth or a Pilgrimage of Grace! To be subjected to one single potentate, or even to two potentates of collateral or concurrent jurisdiction, would be at least nicer than to fall under the yokes of hundreds of potentates each one of whom hoards his edicts as precedents to brandish over the victim who shall venture to move at some tremor of his own discretion.

Forty-eight States, each with a Board of Railway Commissioners. In each of these forty-eight States a hundred, possibly two hundred, counties, each with its Board of Railway Supervisors, assessors, and collectors! In each county, perhaps, a city with its body of Railway ordinances, to say nothing of Committees of Visitation, investigation, and

emendation of Railway procedures! And then, overlording them all, the Interstate Commerce Commission (which for the first ten years of its existence carefully avoided making any decision that could possibly affect a Railway situation, but which has lately assumed Prætorian jurisdiction and permits no item of railway situation to escape its edicts)! The Sherman Law, the Elkins Law, the Hepburn Law, the Newlands Bill, and the Clayton Bill, which, as this paper is being prepared, have been debated and trimmed and contorted for the better part of a Congressional year in the quest of something they can prohibit a Railway from doing or refrain from doing which the Sherman Law, the Elkins Law, the Hepburn Law, etc., have not already forbidden that railway from doing or refraining from doing! These two bills —except that they will be declaratory and re-emphatic of their predecessors, are supposed to expend their aim mostly at "Interlocking Directorates"—that is, at providing that no Railway shall select efficient or experienced persons as directors, but that each Railway shall add to the efficiency and the economy of its public service by possessing a board of experimental directors of its very exclusively own.

Since the only possible peril to the public in an Interlocking Directorate is that such interlocking directorate might work to prevent that healthy rivalry or competition which is supposed to be to the interest of the public—when this Interstate Commerce Commission decrees (as we shall see later on that it does decree) a uniform tariff for all Railways to charge its shippers, it is rather difficult for the lay mind to perceive how, since Railways can only compete by way of their tariffs, an Interlocking Directorate or two can prevent a competition which the Interstate Commerce Commission has already forbidden, and so injure this same Public!

But the Interstate Commerce Commission, besides taking Prætorian jurisdiction of the procedure, the operation, and the revenues of the Railway, goes still further and commandeers its maintenance ("maintenance of way," to use the distribution term of Railway internal adjustments). It orders (Edict of July, 1914) that the common carrier, whether doing State or Interstate business, must report to it its each extension, betterment of physical or corporal condition, improvement, or change in character, location by actual count, weight, measurement, or extension "Distri-

bution by primary accounts, in accordance with the commission's classifications. Reports and summaries shall be made by jobs, and separately by owners and States, Territories, and the District of Columbia. The completion reports for such jobs as extend over two or more fiscal years shall be made in full detail for the entire period covered by the work, and the amounts expended in each fiscal year shall be stated in summary form, whether completed or uncompleted, accompanied by such plans, profiles, diagrams, kept by jobs in such complete detail as to units and quantities of the material and labor entering therein so as to show a unit of analysis of their cost." (The use of the word "job" indicating that not only the completed betterment, but its progress, shall be under espionage, as if one should tax, not only the new skyscraper and the new bridge, but the scaffolding and the false-works necessitated by their building!) This being by the way (for it is announced that this is only the beginning and that other edicts will follow shortly) the first step in that Prætorian jurisdiction of bond or stock issues or debenture-securities to meet all future obligations for construction of betterments of the American Railway.

This is about all up to the present time—unless we should catalogue the threat of legislation of "personal responsibility," by which is understood laws providing that a director shall be personally punished by fine or imprisonment or both for the misdeeds of his Railway, so that no criminal caught aiding or abetting the prosperity of the nation, through any Railway, shall by any possibility escape; or the device called a "Public Service Commission," which any municipality of importance can institute (and numbers of them have already instituted) to pick barer yet the already picked bare bones of a devoted Railway. The edict of the Prætorian Commission of August 1, 1914, that certain Railways may, and certain other Railways may not, raise their tariffs, is a still firmer welding of the Railway shackles, and the Railways can see the Greeks bearing gifts with naked eye in that! Like unto the "Trades Commission Bill, which creates another Prætorian Commission that shall hereafter say what is "fair" and what is "unfair" competition in any transaction between anybody and anybody else—it puts all matters of Commerce within the mercies of a Paternal Government. With Commerce *quoad*

Commerce this paper has no temptation to deal. But if it be demanded, "What then have these sinful Railways done to bring down upon their heads all this crash of legislation, what would the answer be?

Not indeed the awful condition of, say, the New Haven "looting." For, bad as it is, that "looting" has no more to do with these laws and rules than a burglarizing of Tiffany's jewelry establishment would have to do with the prices it charged its customers for diamonds or the wages it paid its employees! Not a malignant purpose on the part of these railways to overcharge somebody, for long before the days even of the Interstate Commerce Commission these Railways, at no inconsiderable disbursement, of their own motion, established what were familiarly known as "Pool Commissions" to themselves equate and mobilize and make just to all parties and all territories their rates and tariffs. (And no one who remembers the days of those Pool Commissions but recalls those vast bureaus with armies of clerks that they required and maintained.)

So far from being law-breakers or law-ignorers, these Railways maintained other armies of lawyers whose business it was to grope among the forest of laws, statutes, ordinances, rules, minutes of commissions and of commissioners, and dig into thousands of bound volumes of decisions of Courts from the Federal Supreme Court to the appeal from the veriest *piedpoudré* jurisdiction in a county, or perhaps a township, somewhere in the maze of municipal divisions! Groping in an even then bewildering maze of State statutes to find (if it pleased Heaven) what it was that a Railway should do and what it should leave undone!

And the army of clerks and the army of lawyers did at least instruct the Railways what to do and what not to do, and, more or less artlessly, placed before them their obligations to the public! But the moment the Pools ceased and disappeared before the breath of the Interstate Commerce Commission, chaos (and a rather costly chaos they found it) arrived!

In breathless succession arrived Federal rescripts: that no Railway under any conditions shall raise the price of the transportation it sells; that no Railway shall transport commodities in the value of which it, or any of its units, possesses an interest, nor alienate such interest to any save hostile purchasers; and that no Railway shall live in comity

or harmony with its rivals or competitors, but must compete to furnish the very transportation the price of which it must not raise!

The only possible way in which Railways can compete with one another is in the way of tariffs. And the Northern Securities decision thundered that Railways must compete; at any rate, they must not combine—though, if they are not to compete there seems to be no reason why they should not combine, any more than why they should not possess Interlocking Directorates! But how are Railways to compete if the Interstate Commerce Commission fixes the rates for all Railways? And where is the interest of the public (which, by the way, owns the stock of these Railways anyhow, as well as their bonds, and so is the Railway Industry itself) involved in all this maze of legislation and lawmaking? What a refuge from it all would be the simple Tudor plan of a Sequestration and a Pilgrimage of Grace!

Those lucky Religious Houses were soon at peace. With the disappearance of their possessions their obligations disappeared, too. But like the Poor, the obligations of the Railway are ever with them. There is neither respite nor Nirvana! For these criminals must still go on operating their Railways. They cannot discontinue, lock up their engines, side-track their rolling stock, and go out of business. For the law says to them, you are quasi-public institutions. You were once allowed to condemn a right-of-way before purchasing it of the owner, which act invested you with all the inconveniences and with none of the privileges of Eminent Domain! And so you must go ahead operating your line; and if what we order you to charge for your services in operating does not pay your disbursements, why, so much the worse for you!

If the reader thinks this merely flippant paraphrase of the law, let him go back as far as the month of February, 1911.

The Interstate Commerce Commission (Prouty, Commissioner) "In Re Investigation of Advanced Rates by Carriers in Official Classification," decided (February 22, 1911, page 10) that the Federal authority can regulate the price at which a producer can sell his product, if that product take the character of railway transportation, irrespective of what it cost him to produce that product. But the learned Commissioner makes a qualification, of which obviously no Rail-

way can take any advantage. He said (page 19), " At the same time the Railway rate is, in the final analysis, a TAX laid upon nearly every species of property, and upon almost every sort of activity; and there is no reason why every other kind of property should be required to pay this particular species of property an undue compensation "—(the capitals are ours).

The learned Commissioner did not state, indeed, wherein the cost of a ton of transportation is any more a TAX upon anybody than the cost of a pound of butter is a TAX upon somebody! Time was when the definition of a " tax " was a rate levied upon a community by the taxing power in that community for the purpose of meeting some expense or disbursement, first decided to be legitimate or desirable or imperative! But the learned commissioner may have used the word in its predatory (we had almost written, in its Pickwickian) sense. Or, as Mr. Bret Harte used it when he pictured his miners who needed the money levying taxes upon any Chinaman who happened to be in the vicinity!

Can anybody figure out how the Public, in whose name all this chaos has been achieved, has ever benefited by this chaos? The adjustments of Railway service are as delicate as the adjustments of a chronometer watch. One figures on the cost of moving a pound of freight over a mile of roadway per wheel and per pound of steam—of the burden of a sixth or a seventh mortgage upon a mile of discontinued siding or a discarded stub-switch, or upon a section of taken-up rails, or upon a lot of locomotive engines sent to the scrap-heap—just simple little theorems like these! And when all these delicate adjustments are further complicated by such an item as the competition of our new waterway through the Isthmus, who shall guess at the effect of the bellowing of all these Behemoths of Public Utility that bellow, " We know nothing of your problems, of the cost of coal, of wages, of strikes, and trades-unions and walking delegates, of mobs that smash your rolling-stock and put your engines out of commission — we don't want to know about your fixed charges or floating debts or disbursements for supplies! Move at your peril! Whatever you are doing—stop doing it! And do something else at your peril! Obey all the laws you can hear of at the risk of disobeying a lot more laws on columns out of sight!"

Let not this extraordinary ruling of Commissioner Prouty

be cited in any spirit of levity. Unfortunately for the Railways and for the Public which operates them, and silly as it was, it has been followed in its effect until in June, 1914, came a decision of the Supreme Court of the United States Re The Intermountain Rate Case (so called), where the Court holds, imperiously and with Prætorian impressiveness, what, up to this time, even under the silly rule of Mr. Commissioner Prouty, was hardly taken seriously, to wit: That the Interstate Commerce Commission is not limited in its jurisdiction to reviewing interstate rates under the clause in the Constitution giving to the Federal Congress the right to regulate commerce between the States, but "may" (which of course means "shall") actually say what rates the Railways shall charge, indifferently to the cost to them of the service, the price of coal, of labor, or of anything else, whether those Railways operate lines entirely within the boundaries of a single State or not!

The Railway, therefore, that arranged its tariff to enable itself to pay interest upon its bonds to the men who loaned it the capital to build itself, or to pay dividends upon the stock that was taken to enable it to operate itself (for the stockholders are partners in the business of transportation, just as the bondholders are partners who have invested in realty to be used as a Railway)—this Railway must now cease to keep its books. Its sole occupation must be to operate a Railway at such remuneration as an interesting body of doctrinaires at Washington feel disposed to elect. Compared with this, who shall say that the Monasteries that were fortunate enough to be swept out of existence were not to be envied their happy lot!

To be sure, the Minnesota Rate Case decision did for a moment hold out a word of promise to the Railway ear by inference, for it would surely be better, however despotic, to have one tyrant rather than a hundred. But on further examination this promise to the ear is broken to the hope, for it still preserves an option in the Prætorian Interstate Commerce Commission to waive its option at any time in favor of the State jurisdiction.

But, one may say, how is the Public interested in our Railways? If not an investor in Railway securities, or not in the employment of a Railway, what cares the private citizen for these problems?

The answer is, that the portion of the Public which is inde-

pendent of the transportation business carried on by this partnership of individuals called Railroad Stockholders and Railroad Bondholders would be a curiosity! Statistics of the year 1912 reveal the pregnant fact that in that year alone the Railways of the United States not only paid about two billions of money directly to wage-earners in their operation, but more than two and a half billions more for supplies and commodities used in operation and for services in connection with such supplies and commodities—this two and one-half billions not being even suggested in Railway payrolls! If there is any article of human consumption that a Railway company is not at some time or other a purchaser of in open market it would be interesting to know what that article is! If there is a person in the land who buys or sells or produces from the soil, or manufactures from the raw material, who does not buy transportation or something else of, or sell something directly to, some Railway or to some customer of a Railway, it would be interesting to know where that person could be in hiding. The physician certainly is not, any more than is his lay-brother the lawyer, beyond the employment of the Railway Company. In the year 1910 one American Railway company paid $47,862.14 for laundry-work, and another paid $36,214.04 for eggs! And even the Gospel itself is not so free but that the Railway is called upon to pay for Ebenezers, and Chapels, and Young Men's Christian Associations, for its employees, as well as the salaries of the Divines that minister unto them, especially when in arrears! So that, even in its function as a distributor, the Railway is easily the first and most important institution in our commercial prosperity. To be sure, in a large sense, anything that tends to mobilize wealth, even highway robbery, is a distributor, and the road-agent who holds us up is a public benefactor and merits his old-age pension when he can hold us up no more. But here is a Distributor upon which, if only as a Distributor, and independent of its convenience as a means of locomotion and transportation, our prosperity most largely depends.

Up to the present time, judicial regulation of the Railway industry in the United States has been purely empirical. When a law failed, the only remedy has been—Make more laws! At the present rate of accumulation of decisions, laws, statutes, and ordinances, and rulings and findings of Commissions such as we have glanced at here, it is difficult

to see an alternative for the Railways (except, of course, bankruptcy, which means the chaos of American credit in the markets of Europe as well as a general bankruptcy at home) other than a return to the old back-stairs, ante-"Gentlemen's Agreement" days of forty years ago, or Federal Ownership with its bonding of a Paternal Nation for five or six billions to buy the physical corpus of the Railways themselves and a civil-service pay-roll it staggers arithmetic to conceive of!

A Railway Code of Procedure to be framed by a consensus of all these Commissions, Boards of Survey, Regulation, and Visitation, Federal, State, and Municipal, and enacted into Law by the Federal Congress, if placed beyond the power of any authority to revise, amend, enlarge, and generally tinker with it, *ad interim,* might quiet the situation altogether, better even than a "Pilgrimage of Grace." It is not impossible but that such a Code of Procedure might be attempted. But meanwhile a fog of despair if not of desperation has closed in and about our American Railways. The horse shies at a wisp of straw in the roadway because his avatar suspected a tiger in the jungle. And the Railway balks at taking a step in any direction in dread of a hundred tigers lurking in Courts, in Commissions, and in Visitations. Then the inevitable follows—that timidity which is more fatal than error, and which leads to chaos. And chaos invites the Strong Man, the Napoleon. And when the Strong Man comes, his private judgment may not invariably run all-fours with the problematical judgment of every one of our Interstate Commerce Commissioners who may come to pass upon his work later on!

The recent passage of the Trades Commission Bill leaves us in no doubt as to the paternal—not to say, the maternal—yearnings of our Federal Government. And when the Clayton Bill shall have become law, it is difficult to see what detail—except the mere detail of physical operation—will be lacking to a complete government control of our American Railways. And for Government to legally control a Railway, and at the same time hold its merely human directors responsible for that Railway's fortuities, is not—well, to say the least, it is not exactly CRICKET! ! !

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